

REMARKS/ARGUMENTS:

Reconsideration and further examination of this application is respectfully requested. Claim 1 remains in the application.

**A. Rejection of Claims
 Under 35 U.S.C. § 103(a)**

1. The Examiner has rejected claim 1 under 35 U.S.C. §103(a) as being unpatentable over Bhatnagar, U.S. Patent No. 5,635,482 in view of Gertzman et al., U.S. Patent No. 6,030,635.

Applicant respectfully traverses. The only thing Applicants invention has in common with Gertzman et al. is the use of hydrogel as a carrier. Applicant's invention utilizes a non-human bone-like powder, whereas Gertzman et al. teaches only the use of human allograft bone powder or granules. Bhatnagar discloses a mixture of a hydrogel carrier with the inclusion of a peptide and a non-human bone-like material (hydroxyapatite being one example (see col. 15, lines 34-40)). However, as the Examiner points out, Bhatnagar discloses a particle form, not a powdered form, for the non-human bone-like material. The Examiner looks to Gertzman et al. for teaching a powdered form, but as pointed out above, Gertzman et al. only discloses human allograft bone powder or granules, not non-human bone-like powder. Therefore, at the time of Applicants invention, combining Bhatnagar with the teaching of Gertzman et al. by one skilled in the art would not arrive at Applicant's claimed invention. Thus, Applicant believes that independent claim 1 is patentable over Bhatnagar in view of Gertzman et al. Accordingly, Applicant requests retraction of the Examiner's rejection under 35 U.S.C. §103(a).

2. The Examiner has rejected claim 1 under 35 U.S.C. §103(a) as being unpatentable over Gertzman et al., U.S. Patent No. 6,030,635.

Applicant respectfully traverses. The Examiner asserts that Gertzman et al. discloses compositions comprising a mixture of bone powder, hydrogel, and growth factors as claimed by Applicant, and that at col. 1, lines 48-59, Gertzman et al. also discloses non-human artificial bone-like powder. However, this is not the case. Gertzman et al. at this location is discussing allograft bone, which by definition is human bone harvested from cadavers. As described by Gertzman et al., "Allograft bone is essentially a collagen fiber reinforced hydroxyapatite matrix

containing active bone morphogenic proteins (BMP) and can be provided in a sterile form." (See col. 1, lines 51-54). Allograft bone is demineralized, removing essentially all of the hydroxyapatite matrix. (See col. 1, lines 54-58 and col. 4, lines 51-52). There is no suggestion, explicit or implicit, in Gertzman et al. that non-human bone-like powder can be used in the invention of Gertzman et al. Indeed, each and every one of the seventeen examples disclosed in Gertzman et al. contains human allograft bone, either in powder form (Examples I-XIII) or granule form (Examples XIV-XVII). Thus, at the time of Applicants invention, it would not have been obvious for one skilled in the art to arrive at Applicants invention, which utilizes non-human bone-like powder, in view of Gertzman et al. Applicant thus believes that independent claim 1 is patentable over Gertzman et al., and withdrawal of the rejection under 35 U.S.C. §103(a) in respect to this claim is respectfully requested.

CONCLUSION:


A bona-fide attempt has been made to place this application in condition for allowance. Each of the Examiner's bases for objection and rejection have been addressed and the claims have been amended, canceled, or arguments presented to overcome such rejections. The application is now believed to meet all statutory requirements and is thus believed to be in condition for allowance. The Examiner's early indication to that effect is, therefore, courteously solicited.

If a telephone conference would expedite allowance or resolve any additional questions, such a call is invited at the Examiner's convenience.

Applicant has enclosed a check for fees due with this response. If any additional fees are due with this response, please charge any additional fees due, or credit any overpayment to, deposit account 50-0792.

Respectfully submitted,

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